IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CIVIL APPLICATION NO.30 OF 2005
IN
APPEAL FROM ORDER NO.35 OF 2005

Miyajan Baba .. Appellant.
V/s.
Irfan Ahmed s/o.Habib Ahmed Qureshi .. Respondent.

Mr.R.D. Soni i/b. Mr.S.B. Sharma for the Appellant.

Mr.Manojkumar Upadhyaya for the Respondent.

CORAM : A.S. OKA, J.

DATED : 5TH APRIL, 2005.

P.C. :

1. Rule. Respondent waives service. Taken up for hearing forthwith.

2. Prima-facie there is nothing on record to show that the Respondent-Plaintiff was put in possession of the suit premises by the Maratha Mandir Co-opperative Bank Limited. Hence, the operation of the impugned judgment and order will have to be stayed.

3. Accordingly, Civil Application is allowed in terms of prayer clause (a).

4. The learned counsel for the Appellant pointed

out that there is a decree for possession passed in favour of the Appellant-Applicant by the Court of Small Causes against a third party in respect of the suit property and the said decree is to put to execution. Pendency of this appeal will not operate as stay of execution proceedings. It will be open for the Respondent to take out appropriate proceedings in the pending execution proceedings.

5. Parties to act on authenticated copy of this order.

(A.S. OKA, J.)